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BEFORE THE
Federal Communications Commission
WASHINGTON, DC

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MAR 31 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
)

MM Docket No. 95-176

REPLY COMMENTS OF BLOOMBERG INFORMATION TELEVISION

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REPLY COMMENTS OF BLOOMBERG INFORMATION TELEVISION

Bloomberg Information Television ("BIT"), a division of Bloomberg L.P., hereby files these reply comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. THE COMMISSION SHOULD EXEMPT BIT FROM THE CLOSED CAPTIONING REQUIREMENTS AS PART OF THIS PROCEEDING.

In its initial comments,² BIT demonstrated that the Commission should use its authority under Section 713(d)(1) to exempt BIT from the closed captioning requirements. The comments of other parties in this proceeding thoroughly support an exemption for BIT:

- **BIT Already Is Accessible to the Hearing Impaired.** As numerous commenters agree, programming which uses text as a primary means of conveying information is already

¹ In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, FCC 97-4 (released January 17, 1997) ("Notice").

² See Comments of Bloomberg Information Television in MM Docket No. 95-176 (filed February 28, 1997) ("BIT Comments").

accessible to the hearing impaired without the need for closed captions.³ BIT's highly visual service employs a content-intensive textual and graphic "L" (so named because it conveys information down the left side and across the bottom of the screen). The "L" provides a continuous up-to-the-minute text feed of 1) news stories covering all areas of national, international, and human interest, 2) world-wide weather forecasts, and 3) the full panoply of financial and business information.⁴ This highly visual format was created for the express purpose of being accessible without the need for an audio track. Thus, BIT is precisely the type of programming commenters have stated should be exempt from closed captioning.

- Closed Captioning Would Make BIT Less Accessible to the Hearing Impaired. Closed captioning highly visual programming such as BIT is literally impossible without blocking essential textual information, a factor many parties cited as a basis for an exemption from the captioning rules.⁵ Because BIT's content-intensive "L" provides the vast majority of content conveyed by the BIT service, such blocking would actually make BIT less accessible to the hearing impaired.⁶ Thus, closed captioning of BIT would simply "make no sense."

³ See, e.g., PreVue Networks Comments at 3-8 (programming which already provides essential information in text should be exempt from closed captioning); HSN, Inc. Comments at 4-8 (same); Self Help for Hard of Hearing People Comments at 6 (programming that is textual in nature should be exempt from closed captioning); WGBH Educational Foundation Comments at 10 (same); National Association of the Deaf Comments at 12 (same); C-SPAN Comments at 9 (same).

⁴ See the graphic depiction of the BIT screen and the description of the BIT "L" attached hereto as Exhibit A.

⁵ See, e.g., PreVue Networks Comments at 6 (noting that closed captioning of a highly visual service would detract from the value of that service to the hearing impaired); Game Show Network Comments at 9 (arguing that the Commission should exempt programs where closed captioning would block a critical component of the screen); Comments of Kaleidoscope at 8-9 (noting that it would be all but impossible to closed caption a multi-media service without substantial disruption to the screen).

⁶ See the graphics depicting the effects of closed captioning on the BIT screen, attached hereto as Exhibit B.

⁷ National Captioning Institute Comments at 10 ("NCI Comments") (advocating a practical approach to exemptions (continued . . .))

- **The Costs of Closed Captioning BIT Would Be Substantial.** Commenters broadly agreed that closed captioning would impose substantial costs,⁸ reinforcing BIT's conservative estimate that close captioning would cost BIT approximately \$1.75 million per year.⁹ As commenters further point out, it is unrealistic to expect that any¹⁰ of this cost would be supported by government funding.
- **Closed Captioning Would Be Particularly Burdensome for BIT.** Like BIT, numerous other commenters noted the particular struggles emergent services face in attempting to establish themselves as viable programming services.¹¹ These commenters emphasized that, as an emergent service with less than 3.5 million subscribers nationwide, BIT does not generate revenues sufficient to justify captioning. Thus, the approximately \$1.75 million per year it would cost to close caption BIT's service would significantly impair BIT's ability to provide high quality news and information programming.

(. . . continued)

which would exempt programming for which captioning would "make no sense.").

⁸ See, e.g., NCI Comments (attached rate card confirming BIT's estimate that high quality captioning would cost at least \$400 per hour). In addition, commenters confirmed that low-cost alternatives such as electronic newsroom ("ENR") captioning do not provide a viable means of providing high-quality captioning of national news services. See Captivision Comments at 5 (noting that ENR captioning is insufficient to meet Congress' captioning mandate); Comments of Jamie Berke (noting that ENR captioning is of low-quality and makes the programming unwatchable).

⁹ See BIT Comments at 14-15.

¹⁰ See, e.g., Comments of Outdoor Life et al. at 35 (noting the lack of government funding for closed captioning small programming services such as BIT).

¹¹ See, e.g., Comments of Outdoor Life et al. (documenting the particularly burdensome impact closed captioning requirements would have on emergent programming services); A&E Comments at 14 (same); C-SPAN Comments at 10 (noting that, for start-up services, "the captioning burden could easily prevent their creation and hasten their demise.").

The record in this proceeding reinforces the numerous bases for granting BIT an exemption from the closed captioning requirements. The record also confirms that the Commission has ample authority to exempt individual services as part of this proceeding and that such individual exemptions would be both logical and efficient.¹² BIT represents precisely the type of service which should be granted an exemption pursuant to this authority.

II. BIT ALSO IS ELIGIBLE FOR AN EXEMPTION AS PART OF THE "PRIMARYLY TEXTUAL" CLASS OF SERVICES.

BIT was among many commenters who supported the Commission's proposal to exempt the class of "primarily textual" services from the closed captioning requirements. Specifically, BIT proposed the following definition of "primarily textual":

Programming that relays information primarily through text, charts, graphs, and other visual means, with audio a secondary, ancillary, or non-existent source of information.

This definition of "primarily textual" would include all programming which, like BIT, is already accessible to the hearing impaired due to its significant reliance on text as a means of conveying information. Such a definition is consistent with the vast majority of commenters who support an exemption for programming services which convey sufficient textual information

¹² See, e.g., USSB Comments at 9; QVC Comments at 4-9.

to enable the hearing impaired viewer to understand the programming.¹³

Nonetheless, some commenters argued that the Commission should adopt an unreasonably narrow definition of "primarily textual" which would only encompass programming which is 100% textual, with an entirely superfluous audio track.¹⁴ These parties fail to accommodate innovative services, such as BIT, which are not 100% textual but which nonetheless convey the vast majority of their information through on-screen text and graphics. In the case of BIT, great expense and effort has gone into creating a unique and innovative screen which provides unsurpassed amounts of up-to-the-minute news and information in a fully accessible textual and graphical format. To exclude such a service from the definition of "primarily textual" simply because it also offers an audio track as a secondary source of information would be both arbitrary and unreasonable.

Moreover, the proposed "100% textual" definition fails to encompass those programs which, while not 100% textual, would be rendered less accessible with closed captions. For example, BIT has demonstrated that closed captioning its service would block

¹³ See, e.g., Association of Late-Deafened Adults Comments at 5 (primarily textual definition should consider whether the audio is necessary to understand the program); Consumer Action Network Comments at 8 (same); League for the Hard of Hearing Comments at 7 (defining primarily textual as programming which could be understood without sound); PrimeStar Partners Comments at 12 (programming should be exempt if "the text is sufficient to afford access to the hearing impaired").

¹⁴ See, e.g., Consumer Action Network Comments at 6; Kaleidoscope Comments at 8; Captivision Comments at 6.

substantial portions of the valuable textual information already provided on the screen, thereby making the service less valuable to the hearing-impaired viewer.¹⁵ The commenters suggesting a narrow definition of "primarily textual" neither address nor provide any reason why closed captioning is justified in such instances.

Finally, adopting a definition of "primarily textual" which is limited to services that are 100% textual would render the "primarily textual" exemption meaningless. Under the "100% textual" definition, the only services exempt from the closed captioning requirements would be those that have nothing to caption. Rather than focusing solely on whether the program service is 100% textual, the Commission should recognize that Congress directed it to balance the burdens of captioning against the incremental benefits to the hearing impaired. Given that the economic burden to caption primarily textual services such as BIT would be substantial, and the fact that captioning of such highly visual services would provide little, if any, benefit to the hearing-impaired community (and, in fact, would impair the viewing experience), this class of services clearly warrants an exemption under section 713(d)(1).

¹⁵ See BIT Comments at 7-10.

III. THE COMMISSION SHOULD CREATE AN EXEMPTION FOR EMERGENT CABLE PROGRAMMING NETWORKS.

BIT also supports the proposal of numerous commenters that the Commission should adopt an exemption for emergent programming networks.¹⁶ As BIT noted in its initial comments, emergent advertising-supported programming networks face extreme difficulty in gaining the subscriber base necessary to establish long-term viability.¹⁷ Forcing such services to absorb the added cost of close captioning would impair their ability to compete in today's highly competitive programming business. Thus, exempting emergent services from the closed captioning requirements would be consistent with the Commission's long-standing policy of providing regulatory relief in order to promote new and diverse sources of video programming.¹⁸

For these reasons, BIT advocates that the Commission adopt the proposal of Outdoor Life et al. to exempt from the closed captioning requirements all national advertising-supported

¹⁶ See, e.g., Comments of Outdoor Life et al. at 32-40; C-SPAN Comments at 10; AlphaStar Comments at 9 (supporting a minimum number of households); NCTA Comments at 17-20; A&E Comments at 14.

¹⁷ BIT Comments at 11-13.

¹⁸ BIT Comments at 19-20 (citing Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, Sixth Order on Recon., Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket No. 92-266, MM Docket No. 93-215, 10 F.C.C.R. 1226, ¶ 64 (1994) ("Our new rules will benefit consumers by assuring that operators will have incentives to add new services...") (other citations omitted)); see also New England Cable News, Memorandum Opinion and Order, 9 F.C.C.R. 3231, ¶ 40 (1994) (providing regulatory relief to "encourage and promote . . . new and innovative media partnerships and program services.").

programming networks with fewer than 20 million subscribers.¹⁹ As has been repeatedly documented, 20 million subscribers is the level of distribution necessary to sustain long-term profitability in today's programming business.²⁰ Thus, the 20 million subscriber exemption would provide necessary relief to emergent programming services in a manner directly related to their ability to sustain the costs of closed captioning.

Moreover, such an exemption would have a highly limited impact on hearing-impaired viewers because qualified networks are watched by a relatively small segment of the population. Indeed, none of the networks which would currently qualify for the proposed exemption had a measurable Nielsen rating during the last quarter of 1996.²¹ As such, this proposed exemption is fully consistent with Congress' specific instruction to the Commission to construe the closed captioning exemptions in light of "the cost of captioning, considering the relative size of the market served or the audience share."²²

¹⁹ Comments of Outdoor Life et al. at 32-40.

²⁰ See, e.g., "Tales of Network Deals and Launches (Real, Imagined & Surreal)," Cable TV Programming, Paul Kagan Newsletter No. 217, May 20, 1996, p. 2 (noting the inability of recently launched independent networks to achieve consistent profitability without reaching 20 million television households); Comments of Outdoor Life, et al. at 33.

²¹ See "Hitting the Ratings Wall," Cable TV Programming, Paul Kagan Newsletter No. 226, February 28, 1997, p. 10.

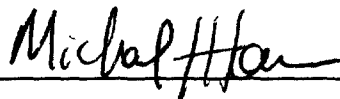
²² H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., 183 (1996).

CONCLUSION

Based on the record in this proceeding, the Commission should grant BIT's request for an exemption from the Commission's closed captioning requirements. Alternatively, the Commission should adopt class exemptions for primarily textual services and emergent programming services and recognize that BIT is exempt under either classification.

Respectfully submitted,

BLOOMBERG INFORMATION TELEVISION



Michael H. Hammer
Todd Hartman

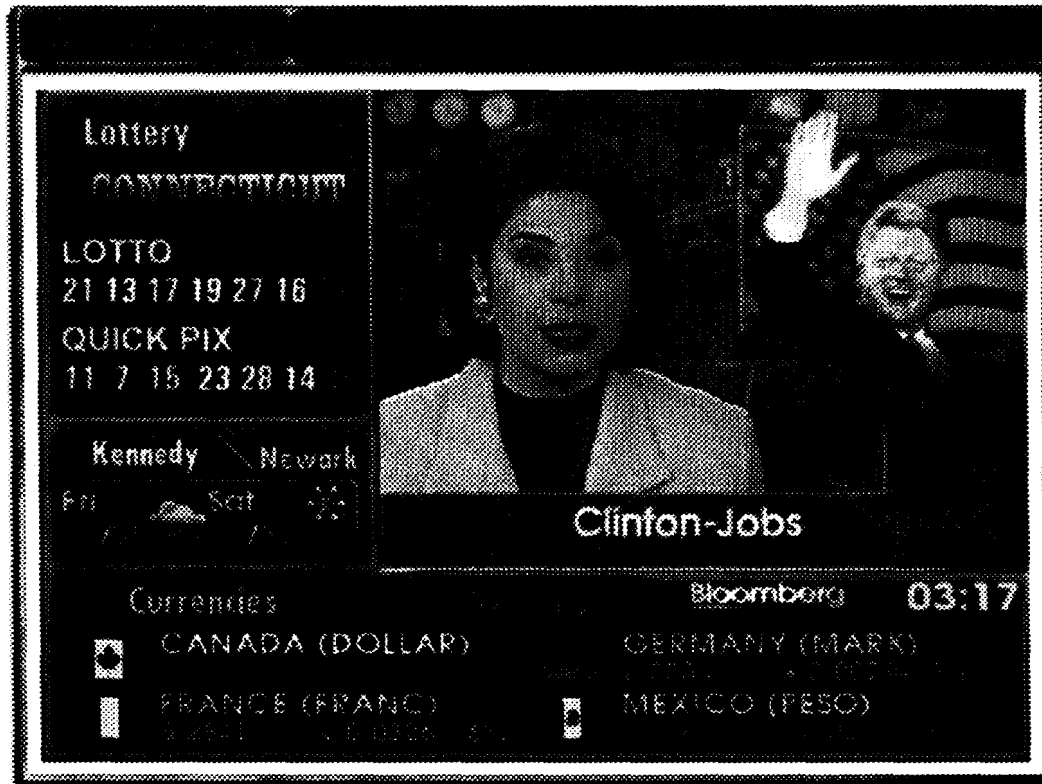
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March 31, 1997

EXHIBIT A:

THE BIT MULTI-MEDIA SCREEN

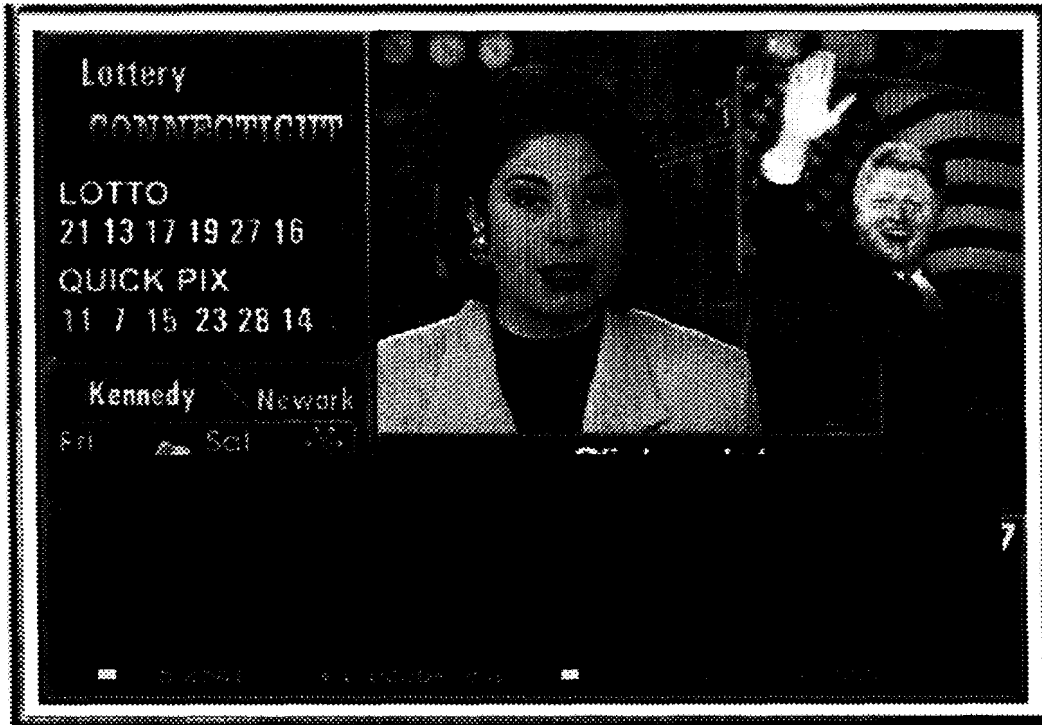


- News and Human Interest The upper left text box provides a continuous, constantly updated, 20-minute loop of top stories in world and national news, sports, entertainment, technology, lifestyles, and other areas of human interest. Tabs on the top border of the text box display the story topic and the topic of the next story. Because each story may be 3-4 pages in length, page numbers are clearly indicated in the lower right hand corner
- Worldwide Weather Located in the middle left section of the screen, the worldwide weather text box provides a continual scroll of weather forecasts for cities in every state and selected foreign countries. Tabs along the top border indicate the city for the forecast currently displayed and the city of the upcoming forecast
- Full Financial Coverage The bottom leg of the "L" provides the full panoply of business and financial market information, including stock quotes, commodities and futures quotes, the S&P listings, and animated financial graphs and displays depicting current business trends. The topic of each informational display is indicated along the top border of the text box, along with additional currency and market indexes and the current time

EXHIBIT B:

THE EFFECTS OF CLOSED CAPTIONING ON THE BIT SCREEN

Scenario 1



Scenario 2

